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COMPLEX COMMERCIAL LITIGATION

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September 14, 2010

Via Electronic Filing and Regular Mail

Honorable Michael A. Shipp United States Magistrate Judge M.L. King, Jr. Federal Building & U.S. Courthouse 50 Walnut Street Newark, New Jersey 07101

Re: Walsh Securities, Inc. v. Cristo Property Management, Ltd., et al. Civil Action No.: 97-3496 (DRD/MAS)

Dear Judge Shipp:

This firm represents Plaintiff Walsh Securities, Inc. ("Walsh Securities") in the above-referenced matter. Please accept this letter in response to the letter submitted by Defendant Commonwealth Land Title Insurance Co. ("Commonwealth"), dated June 4, 2010, [Docket Entry #411] requesting permission to question three witnesses concerning the terms of confidential settlement agreements.¹

Commonwealth is not entitled to question plaintiff and two of Commonwealth's codefendants about the terms of the parties' settlement agreements. Commonwealth continues to portray these agreements as containing illicit arrangements that require the parties to collude and hide discoverable evidence from other parties to the litigation. Not only is this incorrect, as will be seen from the two agreements that can be provided to the Court, but it is offensive that Commonwealth would suggest, without *any* evidence, such dishonest conduct on the part of Plaintiff or Plaintiff's counsel or the other Defendants and their counsel. As we previously stated in our June 11, 2010 letter to the Court [Docket Entry #393], it is inconceivable how Commonwealth can make the inferential leap from counsel's attempt to protect the confidentiality of its client's agreements to Commonwealth's unfounded allegation that these defendants "flipped' in return for dismissal of the lawsuit." Although Commonwealth is no longer using the word "flipped," it still contends that the terms of the settlement agreement may "demonstrate a witness's bias or prejudice." Kindly advise if the Court would like to review the agreements *in camera* and put this insulting allegation to rest once and for all.

Commonwealth is also not entitled to inquire into the terms of the settlement agreements for any offset in a damages calculation. As the Court has ruled multiple times in this very action, Commonwealth and the other title insurance defendants have been sued in contract which means

¹ Walsh Securities also joins in the letter submitted by Vincent P. Manning, Esq. on August 26, 2010. [Docket Entry #414].

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they are not joint tortfeasors with the RICO defendants. Walsh Securities Inc. v. Cristo Prop. Mgmt., Ltd., Civ. No. 97-3496 (DRD), 2009 WL 5064757 (D.N.J. Dec. 16, 2009); Walsh Securities Inc. v. Cristo Prop. Mgmt., Ltd., Civ. No. 97-3496 (DRD), 2007 WL 951955 (D.N.J. March 28, 2007). The specific insurance-related claims against the title companies (i.e., breach of contract, breach of the duty of good faith and fair dealing, and wrongful delay and/or denial of insurance claim) are not even similar to the claims Walsh Securities has asserted against the RICO defendants for their fraudulent acts. Thus, there can be no justification for providing the title insurance defendants with any offset in the damages awarded against them. Any verdict against Commonwealth does not have to take into account any settlement with a RICO defendant. Even if the Court concludes that Commonwealth is entitled to a credit, the amount paid is the only relevant factor and the facts surrounding the settlement do not need to be the subject of a deposition.

For the forgoing reasons, Walsh Securities respectfully requests that Commonwealth's request for an Order compelling deposition testimony about the confidential agreements be denied.

Respectfully submitted,

____s/ Robert A. Magnanini

cc: All Counsel of Record (via e-filing)
Richard Calanni, *pro se* (via e-mail)
Richard DiBenedetto, *pro se* (via regular mail)